

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

DAVID WEBB,

Petitioner,

v.

CYNTHIA ENTZEL, Warden,

Respondent.

Case No. ED CV 17-1131 SVW (MRW)

ORDER DISMISSING ACTION

The Court summarily dismisses Petitioner's habeas petition for lack of jurisdiction.

* * *

1. Petitioner was formerly an inmate at the federal prison facility at Victorville, California. (Shortly after commencing this action, he was transferred to a federal prison in Tennessee.) He filed a habeas petition in this Court under 28 U.S.C. § 2241 seeking review of his sentence resulting from an armed bank robbery conviction.

2. In 1998, Petitioner was convicted of the bank robbery charge at trial in the Eastern District of Arkansas. The district court imposed a life sentence on

1 Petitioner under the career offender provision of 18 U.S.C. § 3559(c)(1). The court
2 found that Petitioner had previously been convicted of robbery, aggravated
3 robbery, and escape. (Docket # 8 at 4.) The Eighth Circuit Court of Appeals
4 affirmed the conviction and sentence. United States v. Webb, 168 F.3d 496 (8th
5 Cir. 1999).

6 3. Since then, Petitioner pursued numerous forms of post-conviction
7 relief in the Arkansas federal court. In its motion to dismiss this action, the
8 government identified three post-appeal collateral attacks that Petitioner filed in
9 the Eastern District of Arkansas between 2000 and the present. The first two were
10 denied in the district court and on appeal to the Eighth Circuit. The third collateral
11 attack – filed several weeks before Petitioner commenced this action in the Central
12 District of California – was also denied. (Docket # 8 at 5-6.)

13 4. In his current action in this district, Petitioner contends that he is
14 serving an “illegal sentence.” He argues that his prior convictions cannot serve as
15 predicate offenses for a career offender sentence following the Supreme Court’s
16 decision in Descamps v. United States, ___ U.S. ___, 133 S. Ct. 2276 (2013).
17 (Docket # 1.) He seeks relief under the “savings clause” under 28 U.S.C. § 2255.
18 (Id. at 3.)

19 5. The government moved to dismiss the action on numerous grounds.
20 Its key claims are that Petitioner’s Section 2241 action is actually an improper
21 motion under Section 2255. The government contends that this Court does not
22 have jurisdiction over Petitioner’s claims. The government also briefly argues that
23 Petitioner’s action fails on the merits. (Docket # 8.)

24 6. In his reply submission, Petitioner appears to add several legal
25 theories to his claim for relief. These include references to the Supreme Court’s
26 decision in Johnson v. United States, ___ U.S. ___, 135 S. Ct. 2551 (2015).

27 * * *

1 7. If it “plainly appears from the face of the petition and any exhibits
2 annexed to it that the petitioner is not entitled to relief,” the Court may summarily
3 dismiss a habeas petition after filing. Local Rule 72-3.2 (magistrate judge may
4 submit proposed order for summary dismissal to district judge); see also Rule 4(b)
5 of Rules Governing Section 2255 Cases in United States District Courts (petition
6 may be summarily dismissed if petitioner plainly not entitled to relief).

7 8. The Court concludes that it does not have jurisdiction over
8 Petitioner’s claims. Federal prisoners have two statutory paths by which they may
9 seek a writ of habeas corpus. “As a general rule,” federal inmates may collaterally
10 attack their conviction only under 28 U.S.C. § 2255. Alaimalo v. United States,
11 645 F.3d 1042, 1046 (9th Cir. 2011). However, a federal prisoner may also seek a
12 writ under 28 U.S.C. § 2241. That statute permits a prisoner to “challenge the
13 manner, location, or conditions of a sentence’s execution” by habeas review in the
14 district in which the inmate is confined. Hernandez v. Campbell, 204 F.3d 861,
15 864 (9th Cir. 2000).

16 9. The statutes overlap in the “exceptional case” in which a petition
17 “qualifies for the escape hatch of [Section] 2255, and can legitimately be brought
18 as a [Section] 2241 petition.” Harrison v. Ollison, 519 F.3d 952, 958 (9th Cir.
19 2008). The “escape hatch” provision under Section 2255(e) allows a federal
20 prisoner to pursue relief under Section 2241 where it appears that a habeas petition
21 in the sentencing court is “inadequate or ineffective to test the legality of his
22 detention.” Id. at 956. To apply the escape hatch, a district court must first answer
23 the “threshold jurisdictional question” of “whether a petition is properly brought
24 under § 2241 or is, instead, a disguised § 2255 motion, before it can proceed to the
25 merits of the claim.” Marrero v. Ives, 682 F.3d 1190, 1194 (9th Cir. 2012).

26 10. A prisoner may qualify for the escape hatch – and bring a
27 Section 2241 petition in the district in which the prisoner is incarcerated – when
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1 the petitioner “(1) makes a claim of actual innocence, and (2) has not had an
2 unobstructed procedural shot at presenting that claim.” Alaimalo, 645 F.3d at 1047
3 (quotation omitted).

4 11. However, a “purely legal claim that has nothing to do with factual
5 innocence [] is not a cognizable claim of ‘actual innocence’ for the purposes of
6 qualifying to bring a § 2241 petition under the escape hatch.” Marrero, 682 F.3d
7 at 1194 (actual innocence “means factual innocence, not mere legal insufficiency”)
8 (citation omitted).

9 12. As for the “unobstructed procedural shot” component, a prisoner must
10 show that: (1) “the legal basis for petitioner’s claim [of actual innocence] did not
11 arise until after he had exhausted his direct appeal and first § 2255 motion”; and
12 (2) “the law changed in any way relevant to petitioner’s claim after that first
13 § 2255 motion.” Harrison, 519 F.3d at 960. An intervening court decision “must
14 effect a material change in the applicable law” to satisfy this test. Alaimalo,
15 645 F.3d at 1047 (quotation omitted).

16 * * *

17 13. Petitioner’s habeas claims here cannot get him through the escape
18 hatch. His claims regarding his sentencing nearly 20 years ago do not take up
19 whether he is factually innocent of either (a) his offense of conviction or (b) the
20 prior convictions that led to his enhanced sentence. Instead, he advances “purely
21 legal claims” regarding those convictions and his resulting sentence that do not
22 establish a cognizable claim of “actual innocence” under § 2255(e). Marrero, 682
23 F.3d at 1194.

24 14. Moreover, Petitioner cannot convincingly establish that he has been
25 denied an unobstructed procedural shot at bringing a successive Section 2255
26 motion in Arkansas. Alaimalo, 645 F.3d at 1047. Petitioner already pursued
27 three post-appeal motions – without success – in the trial court, including one that
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1 he filed nearly simultaneously with this action. Notably, that recent action did not
2 pursue relief under Descamps (even though that case had been decided
3 approximately four years ago). (Docket # 8-14.)

4 15. Further, he cannot demonstrate that the Descamps decision has any
5 impact on his case. The Ninth Circuit has rejected the argument that the 2013
6 decision in Descamps served as a retroactive change of federal sentencing law.
7 United States v. Myers, 691 F. App'x 411 (9th Cir. 2017). Instead, Descamps
8 simply clarified existing Supreme Court precedent. Ezell v. United States, 778
9 F.3d 762 (9th Cir. 2015). Therefore, Descamps did not cause a material change in
10 the law relevant to Petitioner's claims. Harrison, 519 F.3d at 960.

11 16. Finally, the government convincingly argues that Descamps and
12 Johnson – both of which involved close analyses of specific components of the
13 Armed Career Criminal Act [18 U.S.C. § 924] – do not apply to sentencing under
14 the career offender provisions of Section 3559. Gray v. United States, 622 F.
15 App'x 788, 792 (11th Cir. 2015) (escape clause provision of Section 3559 renders
16 Descamps inapplicable to career offender sentencing); Walker v. United States,
17 2017 WL 3600943 at *14 (S.D. Fl. 2017) (“§ 924(e) and § 3559(c)(3)(A) are
18 different, in pertinent part, because § 3559(c)'s language requires a sentencing
19 court to look to the underlying facts of the offense in order to determine whether it
20 was a non-qualifying offense”) (quoting Gray).

21 17. Petitioner cannot squeeze through the “escape hatch” in Section 2241
22 to have this Court hear his sentencing challenge. He does not advance a true
23 “actual innocence” claim, and he identifies no material change in law applicable to
24 his case. The Court summarily concludes that Petitioner's action is a disguised
25 Section 2255 challenge over which this Court does not have jurisdiction.

26 * * *

1 Therefore, the present action is DISMISSED without prejudice.

2 IT IS SO ORDERED.

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5 Dated: 11/15/2017

6 _____

7 HON. STEPHEN V. WILSON
8 UNITED STATES DISTRICT JUDGE

9 Presented by:

10 

12 HON. MICHAEL R. WILNER
13 UNITED STATES MAGISTRATE JUDGE